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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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8 EDDIE E. BELL,

9 *Petitioner,*

10 vs.

12 NEVEN, *et al.*,

13 *Respondents.*  
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2:06-cv-01143-RLH-PAL

ORDER

15 This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review  
16 of the amended petition (#8) under Rule 4 of the Rules Governing Section 2254 Cases.

17 The original petition in this matter asserted at least thirty-four different claims under  
18 three grounds in a scattershot fashion. The Court's prior screening order (#4) accordingly  
19 instructed the petitioner, *inter alia*, to not combine ineffective assistance of counsel claims  
20 together with other claims not based on ineffective assistance of counsel under a single  
21 ground. The order additionally instructed petitioner to set forth his multitude of ineffective  
22 assistance of counsel claims arising from different circumstances in separate grounds.

23 The Court further *sua sponte* raised the question of whether the claims presented had  
24 been fully exhausted. After setting forth the governing law regarding the exhaustion  
25 requirement, the Court directed as follows:

26 Accordingly, in the amended petition filed in response to  
27 this order, petitioner: (1) must attach copies of all briefs,  
28 memoranda, and other papers upon which he relies to establish  
that the claims alleged in the amended petition are exhausted;

1 and (2) for each claim, separately, he must state specifically, by  
2 page and line, which paper or papers presented the claim to the  
state district court and then to the Supreme Court of Nevada.

3 #4, at 3. The Court's order further informed petitioner:

4 IT FURTHER IS ORDERED that this action may be  
5 dismissed without prejudice without further advance notice if  
petitioner fails to both fully and timely comply with this order.

6 *Id.*, at 6.

7 The amended petition again presents a multitude of different claims for relief in three  
8 grounds in a scattershot fashion. Despite the directives in the Court's prior order, the  
9 amended petition continues to combine multiple ineffective assistance of counsel claims with  
10 one another in a single ground. Additionally, despite the directives in the Court's prior order,  
11 the amended petition continues to combine ineffective assistance of counsel claims in a  
12 single ground together with other claims that are not based upon ineffective assistance of  
13 counsel.

14 Moreover, and more significantly, petitioner failed to comply with the Court's order by  
15 failing to demonstrate exhaustion specifically as to each claim of the multitude of claims in the  
16 amended petition. Indeed, the amended petition instead essentially acknowledges that the  
17 claims were not fairly presented to the state courts, either on direct appeal or state post-  
18 conviction review.

19 With regard to direct appeal, the amended petition reflects that the claims in Grounds  
20 One and Two were not presented on direct appeal; and on Ground Three, the amended  
21 petition fails to state either "yes" or "no" as to whether the claims were presented on direct  
22 appeal. As to all three grounds, the amended petition asserts that the claims were not  
23 presented on direct appeal because "the counselor that represented petitioner during  
24 trial/sentencing proceedings also represented him during appellate review."

25 With regard to state post-conviction review, the amended petition fails to state either  
26 "yes" or "no" as to whether the multitude of claims in Grounds One through Three were  
27 presented on state post-conviction review. The amended petition asserts that the claims were  
28 not presented in a state post-conviction petition because "petitioner's assertions were

1 ambiguous where the State made many [or its] interpretations.” On the claims raised in  
2 Ground One, the amended petition states that the claim was raised on appeal from the denial  
3 of state post-conviction relief to the Supreme Court of Nevada. On the claims raised in  
4 Grounds One and Two, the amended petition fails to state either “yes” or “no” as to whether  
5 the multitude of claims were presented to the Supreme Court of Nevada. The amended  
6 petition asserts that the claims were not presented to the Supreme Court of Nevada because  
7 they were “raised however ambiguously” or were “ambiguously raised.”

8       The only state court brief, memorandum or pleading attached with the amended  
9 petition is a copy of petitioner’s opening brief on direct appeal. The amended petition  
10 concedes, however, that the claims in Grounds One through Three were not presented on  
11 direct appeal. No papers were attached showing that any of the claims in the amended  
12 petition were fairly presented on state post-conviction review to the state courts through to the  
13 Supreme Court of Nevada. Further, the amended petition, despite the directive in the Court’s  
14 screening order, does not state “for each claim, separately, . . . specifically, by page and line,  
15 which paper or papers presented the claim to the state district court and then to the Supreme  
16 Court of Nevada.”

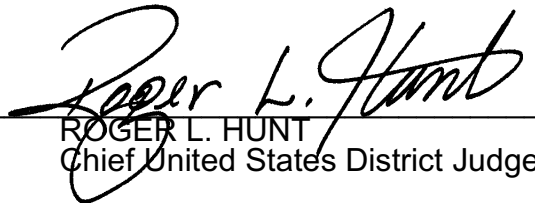
17       In sum, on the exhaustion issue, petitioner did not fully respond to the exhaustion  
18 queries in the petition form, much less respond to the Court’s express directive to specifically  
19 show separately as to each claim and with supporting papers that the claims raised in the  
20 amended petition were exhausted. An acknowledgment that unspecified claims were  
21 presented, at best, “ambiguously” fails to establish that any claim in the amended petition was  
22 fairly presented to the state courts. The Court ordered petitioner to demonstrate exhaustion  
23 specifically and separately as to each claim, and he failed to do so as to any claim in the  
24 amended petition.

25       This matter therefore will be dismissed without prejudice, first, for failure to comply with  
26 the prior order of this Court and, second, in the alternative, for failure to demonstrate that any  
27 claim presented in the amended petition was fairly presented to the state courts after  
28 petitioner was directed to do so on the Court’s *sua sponte* exhaustion inquiry.

1 IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice. The  
2 Clerk of Court shall enter final judgment accordingly.

3 IT FURTHER IS ORDERED that, pursuant to Rule 4 of the Rules Governing Section  
4 2254 Cases, the Clerk of Court additionally shall serve a copy of this order, the judgment, and  
5 the amended petition upon respondents by sending same by certified mail to the Office of the  
6 Attorney General, Criminal Division, 100 North Carson St., Carson City, NV 89701-4717. No  
7 response is required from respondents.

8 DATED this 17<sup>th</sup> day of January, 2007.

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12 ROGER L. HUNT  
13 Chief United States District Judge  
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